Before the FEDERAL COMMUNICATIONS COMMISSION Washington D.C. 20554

In re Application of)	
New Young Broadcasting Holding Co., Inc.) File No. BTCCDT-2013) MB Docket No.13-191	0703ADG
For Consent to Transfer of Control of Station WLNS-TV, Lansing, Michigan FIN: 74420)))	

To: The Secretary, Federal Communications Commission

Attn: Chief, Video Division, Media Bureau

OPPOSITION TO INFORMAL OBJECTION

New Young Broadcasting Holding Co., Inc. ("Young"), by its attorneys, hereby responds to the "Informal Objection" and late-filed "Supplement to Informal Objection" submitted by Spartan-TV, LLC ("Spartan"), a competitor in the Lansing, Michigan market. At the outset, Young notes that despite Spartan's submission of its filing in the Young/Media General, Inc. merger docket, the Informal Objection raises no issues with regard to the merger and (as reflected by its caption) challenges only the application to transfer WLNS-TV, Young's station in Lansing. With regard to that specific application, Spartan has not alleged any harm to itself or the public from the transfer of WLNS-TV, and therefore has presented no basis for objecting to that transfer. In particular, it has not presented to the Commission "specific allegations of fact sufficient to show that a grant of the application would be *prima facie* inconsistent with the public interest" as required by Section 309(d)(1) of the Communications Act of 1934. As a

¹ North Idaho Broadcasting Company, 8 FCC Rcd 1637, 1638 (1993).

result, the Informal Objection must be promptly dismissed, denied, or disregarded for lack of any relevance to the WLNS-TV transfer application it claims to challenge.²

Spartan is the owner of WHTV, a MyNetwork affiliated station in the Lansing market. Spartan arranged for Young station WLNS-TV to provide sales and other services to WHTV beginning in 2006. In March of this year, WLNS-TV also began providing sales and other services to WLAJ-TV in Lansing, which was recently acquired by WLAJ-TV LLC. As WLAJ-TV is not owned by Young, it is not affected by the pending application to transfer control of WLNS-TV from Young's current sole majority shareholder to a post-merger shareholder group, nearly 70% of which is comprised of current Young shareholders (including the current sole majority shareholder). Instead of addressing the WLNS-TV transfer application, the Informal Objection consists entirely of baseless and irrelevant speculation as to how WLAJ-TV LLC is operating WLAJ-TV, which it acquired in March of this year. Such allegations have no connection whatsoever with the WLNS-TV transfer application and are pure conjecture in any event.

As a review of the Informal Objection reveals no allegations that the transfer of control of WLNS-TV harms the public in any way, and since the post-merger entity will have the exact same broadcast interests in the Lansing market as Young currently does (Media General having

² The treatment of Informal Objections is governed by Section 73.3584(e) of the Commission's Rules, which states that:

Untimely Petitions to Deny, as well as other pleadings in the nature of a Petition to Deny, and any other pleadings or supplements which do not lie as a matter of law or are otherwise procedurally defective, are subject to return by the FCC's staff without consideration.

no stations in the market), the Informal Objection appears to be nothing more than a wasteful diversion of the Commission's resources. However, the Commission need not look far to discern the motive behind it. It is found in Footnote 2, where Spartan states "[w]e anticipate that New Young may elect to discontinue the SSA and JSA with Spartan in retaliation for this *Informal Objection*, possibly requiring Spartan to sell WHTV under a distressed waiver"

In reality, the service agreements between Young's WLNS-TV and Spartan's WHTV expire by their own terms at the end of this year. The Informal Objection is an obvious attempt by Spartan to abuse the Commission's processes to coerce Young into extending those agreements to avoid FCC procedural delay of the Young/Media General merger. The Commission has specifically found such an effort to be an abuse of its processes and harmful to the public, stating that

[p]etitions are specifically intended to enable interested parties to provide factual information to the Commission as to whether grant of an application would serve the public interest. To the extent that they are used for other than their intended purpose, *e.g.*, for private financial gain, to settle personal claims, or as an emotional outlet, the public interest is disserved.⁴

In short, the Spartan Informal Objection has no relevance to whether grant of the WLNS-TV application is in the public interest, and Spartan fails to establish it is a "party in interest" to this proceeding with standing to object to grant of the application, informally or otherwise. To oppose the WLNS-TV transfer application, Spartan must demonstrate that grant of the challenged application would cause it to suffer a direct injury, ⁵ establish a causal link between

³ Informal Objection at 2 n.2 (italics in original).

⁴ Amendment of Section 1.420 and 73.3584 of the Commission's Rules Concerning Abuses of the Commission's Processes, 5 FCC Rcd 3911, 3912 (1990) (citation omitted).

⁵ See, e.g., Letter to Sweetwater Broadcasting Company from Donna C. Gregg, Chief, Media Bureau, 20 FCC Rcd 13034, 13037 (MB 2005) ("Sweetwater Broadcasting") ("Party in interest Footnote continued on next page

the claimed injury and the grant of the application,⁶ and show that it is likely, as opposed to merely speculative, that the injury would be prevented or redressed by denying the application.⁷ The absence of any one of these deprives the objector of grounds to challenge the application, and Spartan fails on all three.⁸

Instead of addressing the WLNS-TV transfer application, Spartan presents two groups of irrelevancies, both of which relate entirely to the operation of WLAJ-TV by WLAJ-TV LLC (which is *not* a party to this proceeding). The first is a batch of completely unsupported (and for that matter, untrue⁹) speculations about the operation of WLAJ-TV, and the second is a group of Spartan-invented "certifications" it insists be made by WLNS-TV and WLAJ-TV (which again, is not even in this proceeding), that bear little relation to the FCC's actual rules and policies regarding services agreements. Not content to stop at this farcical overreach, Spartan makes a sudden left turn in the concluding sentence of its objection, demanding that if its fabricated certifications aren't signed, "the FCC should deny the merger or require that the WLAJ turn in it

Footnote continued from previous page

status is deemed to exist when a petitioner demonstrates that the grant of the petitioned application will cause the petitioner a direct injury.").

⁶ *Id*.

 $^{^{7}}$ Id

⁸ The Commission has explained that "in determining whether a petitioner qualifies as a 'party in interest,' we must apply judicial standing principles." *Petition for Rulemaking to Establish Standards for Determining the Standing of a Party to Petition to Deny a Broadcast Application*, 82 FCC 2d 89 (1980), at ¶ 19. As the Commission grounds its standing requirements in judicial standards, it follows that Spartan cannot maintain party in interest status without demonstrating, among other things, actual injury, which it has not done here. *See Sweetwater Broadcasting*, 20 FCC Rcd at 13037. *See also Shareholders of AMFM, Inc.*, 15 FCC Rcd 16062 (2000) (petitioner lacked standing as the "bare allegation" that proposed transferee would harm petitioner was "purely speculative and unsupported," and thus "inadequate to establish the requisite injury.").

⁹ See infra Note 11.

[sic] ABC affiliation."¹⁰ Although Spartan's motivation for this request is clear—it would like to grab WLAJ-TV's ABC affiliation—it fails to explain where the FCC would obtain authority to require such a result, on what basis it would do so, how depriving the people of Lansing of their current source of ABC programming is in the public interest, how the FCC could impose such a requirement on a licensee *that is not a party to this proceeding*, or why the licensee of WLAJ-TV should be abused because two independent parties—Young and Media General—chose to merge.

So what "facts" does Spartan claim support its quest for this impossible relief? It neatly summarizes them on Page 3 of its Informal Objection: "There is no local management, there is no local news, there is no local website." However, the Informal Objection was filed without any evidence to support these assertions, which are erroneous in any event.¹¹ After the petition

¹⁰ Informal Objection at 4.

¹¹ Even if WLAJ-TV's operations were somehow relevant to the WLNS-TV transfer application, Spartan's conclusory statements are not borne out by the facts. For example, the claim of a lack of management is entirely baseless. As a services provider to WLAJ-TV, WLNS-TV has worked with Chuck Toner, the Manager of WLAJ-TV, who designed and produced WLAJ-TV's on-air image and promotion, and who coordinates with the station's owner on the station's programming decisions.

As to news, in contrast with Spartan's claim, under WLAJ-TV's prior owners the station had *no* local newscast, just a brief five minute news cut-in at 11pm weekdays and one to two minutes of news cut-ins in each weekday broadcast of ABC's *Good Morning America*, all produced *outside* the Lansing market. It was the Joint Sales Agreement with WLNS-TV (approved by the FCC as part of WLAJ-TV LLC's acquisition of the station) which allowed WLAJ-TV to provide local newscasts for the first time. Under that arrangement, WLNS-TV provides over 15 hours of newscast programming to WLAJ-TV each week, creating the first competing newscast available in parts of the southern portion of the market (where the WLNS-TV signal doesn't reach), including news reports from the only TV reporter in the market assigned to that portion of the market. In addition, WLNS-TV provides WLAJ-TV with *nine* minutes of unique news cut-in content each weekday that it inserts into its broadcast of ABC's *Good Morning America*, providing significantly more local morning news content in that program. Also, for the first time, WLAJ-TV is able to broadcast severe weather news cut-ins that are relayed from WLNS-TV.

deadline, Spartan submitted a "Supplement to Informal Objection", but even that contained only a general declaration from the signatory of the Informal Objection, claimed no first-hand knowledge, and merely asserted that "the facts contained in the 'Informal Objection' ... are true and correct to the best of my belief and understanding." Even had it been timely submitted, "belief" is no substitute for knowledge, and the FCC has previously ruled that such filings fail to meet the requirements of the Communications Act of 1934 to present "specific allegations of fact sufficient to show that a grant of the application would be *prima facie* inconsistent with the public interest":

Allegations ... that consist "of ultimate, conclusionary facts or more general allegations on information and belief, supported by general affidavits ... are not sufficient."¹²

Spartan has therefore failed to make the required showing, and the Informal Objection merits no further consideration by the Commission.

Before proceeding to the final issue of Spartan's "certifications", it is worth noting that WLAJ-TV LLC submitted its Joint Sales Agreement, Shared Services Agreement, and related

Finally, while stations are of course not required to have a web presence at all, WLAJ-TV does in fact have its own web page accessible directly by typing "wlaj.com", or indirectly via the WLNS-TV web page. Despite Spartan's unfounded and irrelevant claims of nefarious motives, the arrangement provides WLAJ-TV with a superior web presence while avoiding the significant costs of creating and maintaining a website from scratch.

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¹² North Idaho Broadcasting Company, 8 FCC Rcd 1637, 1638 (1993) (quoting Gencom, Inc. v. FCC, 832 F.2d 171, n.11 (D.C. Cir. 1987)). As the Commission has stated in the similar context of petitions for reconsideration, "nonspecific, conclusory allegations are insufficient, as are allegations of fact regarding matters we cannot officially notice that are not supported by an affidavit from a person with first-hand knowledge of the facts alleged." *Univision Holdings, Inc.*, 8 FCC Rcd 3931 (1993), at ¶ 3.

agreements with WLNS-TV to the FCC in its application to acquire the station.¹³ Thus the FCC was fully aware of their content (which is very similar to dozens of other such agreements previously approved by the FCC) when it granted the WLAJ-TV assignment application. To the extent Spartan is claiming that the parties are not complying with their own agreements, the Commission has made clear in prior decisions that "we believe it is not appropriate to infer, in the absence of information to the contrary, that [an applicant] will not faithfully carry out its representations or that it will be controlled and operated in a manner that differs from the agreement under consideration."¹⁴

Spartan's "certifications" therefore serve no purpose, as they are based on either the erroneous assumption that parties routinely disregard their own agreements, or that the FCC should not have approved the agreements in the first place (in which case, the appropriate place for Spartan to lodge its challenge was in the long-since-final WLAJ-TV assignment application proceeding, where WLAJ-TV LLC was actually a party). ¹⁵

¹³ See Application for Consent to Assignment of Broadcast Station License from WLAJ Licensee, LLC to WLAJ-TV LLC, File No. BALCDT-20121011AAP, at Attachment 13.

¹⁴ News International, PLC, 97 FCC2d 349 (1984), at ¶ 17; see also Cleveland Television Corp. v. FCC, 732 F.2d 962, 969 (D.C. Cir. 1984) ("We decline to order the Commission to disregard an applicant's corporate structure on the basis of a mere suspicion, unsupported by the evidence, that the applicant will operate as if no corporate structure existed.").

Of course, to the extent Spartan intends through its Informal Objection here to propose that parties (and apparently non-parties) to a transfer application make such certifications, the appropriate venue is a rulemaking proceeding, not an adjudicatory proceeding. *See Morton Jerome Victorson, Bankruptcy Trustee*, 10 FCC Rcd 9499 (1995), at ¶¶ 5-6 ("Mills suggests that we should disregard the plain language of the local radio ownership rules and base the station's audience share on Mills' definition of what it believes to be the 'market' actually served by the stations Insofar as Mills is requesting that the Commission consider alternative definitions for determining the relevant market for audience share purposes, the appropriate course of action would be a request for rulemaking." (*citing Patteson Brothers, Inc.*, 8 FCC Rcd 7595, 7596 (1993)).

Moreover, Spartan's certifications bear little if any relation to the Commission's actual law and policies regarding services agreements. For example, in the first certification, Spartan insists that WLAJ-TV certify that it has "two management employees", when well-established Commission precedent requires a main studio to have two employees, but only one of which must be a manager. Similarly, Spartan's fifth certification would require WLAJ-TV to certify that it has a "separate web presence", but of course the Commission does not require that stations have a web page at all. Spartan's remaining three certifications are fairly redundant, focusing on WLAJ-TV's on-air content and whether the licensee and its employees have the "final role in all programming decisions". However, that is not in dispute. For example, Section 4.7 of the WLAJ-TV Joint Sales Agreement reviewed by the Commission states, among other things, that

Licensee will maintain ultimate control and authority over the Station, including, specifically, control and authority over the Station's operations, finances, personnel and programming.... Licensee shall (a) have exclusive authority for the negotiation, preparation, execution and implementation of any and all programming agreements for the Station, and (b) retain and hire or utilize whatever employees Licensee reasonably deems appropriate or necessary to fulfill those programming functions.¹⁸

Spartan has presented no facts suggesting that WLAJ-TV LLC is not operating in compliance with its contractual obligations, and as noted above, the Commission will not assume otherwise.

Of course, the real question is what any of this has to do with Young's application to transfer control of station WLNS-TV. The answer, obviously, is "nothing". The Commission has consistently taken the position that frivolous pleadings are to be rejected, defining frivolous

¹⁶ See Jones Eastern of Outer Banks, Inc., 6 FCC Red 3615 (1991), clarified, 7 FCC Red 6800 (1992).

¹⁷ Informal Objection at 4.

¹⁸ See Application for Consent to Assignment of Broadcast Station License from WLAJ Licensee, LLC to WLAJ-TV LLC, File No. BALCDT-20121011AAP, at Attachment 13.

pleadings as "one[s] filed without any effort to ascertain or review the underlying facts or based on arguments that have been specifically rejected by the Commission . . . or having no plausible basis for relief." Such is the case here. The Commission should therefore exercise its authority under Section 73.3584(e) of its Rules and return Spartan's Informal Objection without consideration. Alternatively, it should promptly dismiss or deny the Informal Objection and expeditiously grant the WLNS-TV transfer application.

Respectfully submitted,

NEW YOUNG BROADCASTING HOLDING CO., INC.

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Its Attorney

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Dated: August 19, 2013

¹⁹ Commission Taking Tough Measures Against Frivolous Pleadings, 11 FCC Rcd 3030 (1996) (quotation marks and brackets omitted; ellipses in original).

Declaration of Robert Simone

- I, Robert Simone, do hereby declare under penalty of perjury that the following is true and correct:
- 1. I am the General Manager of WLNS-TV, Lansing, Michigan, which is owned by Young Broadcasting of Lansing, Inc. In that position, I have been involved in the provision of services to WLAJ-TV and worked with its personnel.
- 2. I have reviewed the attached "Opposition to Informal Objection." Except for (a) matters cited therein contained in the FCC's records, (b) matters for which other support is provided, and (c) matters of which the Commission may take official notice, the facts set forth therein are true and correct.

Robert Simone

Dated: August 16, 2013

CERTIFICATE OF SERVICE

I, Cherie L. Mills, a secretary in the law firm of Pillsbury Winthrop Shaw Pittman LLP, do hereby certify that true copies of the foregoing "OPPOSITION TO INFORMAL

OBJECTION" were sent via e-mail this $\sqrt{q^{th}}$ day of August, 2013, to the following:

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